

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 208

Introduced by Schmitt, 41

Read first time January 11, 1999

Committee: Government, Military and Veterans Affairs

A BILL

- 1 FOR AN ACT relating to archaeological resources preservation; to
- 2 adopt the Nebraska Archaeological Resources Preservation
- 3 Act; and to provide penalties.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. This act shall be known and may be cited as
2 the Nebraska Archaeological Resources Preservation Act.

3 Sec. 2. The Legislature hereby finds and declares that:

4 (1) Archaeological sites represent an important public
5 resource embodying the record of our state's cultural heritage;

6 (2) Many archaeological sites embody sacred and cultural
7 patrimonial values important to the American Indian community;

8 (3) Preservation of the heritage that archaeological
9 sites represent is in the best interests of the public;

10 (4) The resource base of archaeological sites is being
11 threatened at an increasing rate by agricultural, urban,
12 commercial, transportation, governmental, and industrial
13 development;

14 (5) Current law and other remedies are inadequate to
15 preserve archaeological resources; and

16 (6) The rights of private property owners must be
17 maintained even when their holdings contain archaeological
18 materials.

19 Sec. 3. The purposes of the Nebraska Archaeological
20 Resources Preservation Act are to:

21 (1) Establish criteria for identifying significant
22 archaeological sites deserving protection;

23 (2) Establish legal protection for significant
24 archaeological sites in the public domain;

25 (3) Encourage preservation of significant archaeological
26 sites on private lands; and

27 (4) Establish a public archaeology program to work
28 closely with educational, cultural, and avocational organizations.

1 Sec. 4. For purposes of the Nebraska Archaeological
2 Resources Preservation Act:

3 (1) Archaeological resource means any material object of
4 past human life or activities that is of archaeological interest,
5 as determined under rules and regulations adopted and promulgated
6 pursuant to the act. Such objects include, but are not limited to,
7 pottery, basketry, bottles, weapons, tools, structures or portions
8 of structures, dwellings, rock paintings, rock carvings, intaglios,
9 graves, human skeletal materials, or any portion or piece of any of
10 such items. Nonfossilized and fossilized paleontological
11 specimens, or any portion or piece thereof, shall not be considered
12 archaeological resources unless found in an archaeological context.
13 No object shall be treated as an archaeological resource under this
14 subdivision unless such object is determined to be at least fifty
15 years of age;

16 (2) Archaeological site means a place or location where
17 archaeological resources are found;

18 (3) Archaeologist means a professional with a graduate
19 degree in archaeology or anthropology, plus (a) at least one year
20 of full-time professional experience or equivalent specialized
21 training in archaeological research, administration, or management,
22 (b) at least four months of supervised field and analytic
23 experience in general North American archaeology, and (c)
24 demonstrated ability to carry research to completion;

25 (4) Master archaeological site file means the records
26 inventory of all known Nebraska archaeological sites maintained by
27 the Nebraska State Historical Society;

28 (5) National Register of Historic Places means the

1 register of districts, sites, buildings, structures, and objects
2 significant in American history, architecture, archaeology,
3 engineering, and culture, maintained by the Secretary of the
4 Interior under the authority of the federal Historic Sites,
5 Buildings, and Antiquities Act, 16 U.S.C. 462(b), and the National
6 Historic Preservation Act, 16 U.S.C. 470a(a)(1)(A);

7 (6) State agency means any division, department, board,
8 bureau, commission, or agency of the State of Nebraska;

9 (7) State Archaeology Office means the office created
10 within the Nebraska State Historical Society and headed by the
11 State Archaeologist; and

12 (8) Undertaking means a project, activity, or program
13 funded in whole or in part under the direct or indirect
14 jurisdiction of a state agency.

15 Sec. 5. (1) There is hereby established the State
16 Archaeology Office which shall be a division within the Nebraska
17 State Historical Society. The purpose of the office shall be to
18 coordinate and encourage appropriate archaeological undertakings,
19 preserve archaeological resources, and adopt and promulgate rules
20 and regulations to meet the requirements of the Nebraska
21 Archaeological Resources Preservation Act.

22 (2) The State Archaeology Office shall be headed by the
23 State Archaeologist. The State Archaeologist shall be a graduate
24 of a recognized college or university with a graduate degree in
25 archaeology or anthropology and shall have sufficient practical
26 experience and knowledge of archaeology to qualify for the purposes
27 of the act.

28 (3) The State Archaeology Office shall:

1 (a) Adopt and promulgate rules and regulations to carry
2 out the act and review the results of archaeological research
3 resulting from the act;

4 (b) Promote development of archaeological resources for
5 educational, cultural, tourism, and scientific purposes;

6 (c) Support popular and avocational interest in
7 archaeological resources through field trips, demonstrations,
8 seminars, and excavations throughout the state;

9 (d) Conduct a program of locating, identifying,
10 quantifying, and assessing the significance of the state's
11 archaeological resources;

12 (e) Maintain the master archaeological site file;

13 (f) Advise state agencies, political subdivisions,
14 nongovernmental organizations, commercial and business interests,
15 private property owners, individuals, and others as to the
16 provisions and requirements of the act;

17 (g) Serve as the liaison office in transactions dealing
18 with archaeological resources between state agencies and between
19 the state and the federal government;

20 (h) Cooperate with state agencies and others in
21 overseeing the execution of undertakings required by the act;

22 (i) Serve as the liaison office between state agencies
23 and Indian tribes, the Commission on Indian Affairs, or other
24 constituent groups culturally affiliated with archaeological sites
25 involved in undertakings;

26 (j) Maintain a list of archaeologists qualified to
27 conduct research projects required by the act;

28 (k) Maintain a permanent repository and electronic data

1 base of published and unpublished sources on the archaeological
2 resources of the state;

3 (l) Prepare, publish, and distribute for professional use
4 and public education reports, bulletins, pamphlets, maps, and other
5 products necessary to achieve the purposes of the act;

6 (m) Implement a program of emergency salvage archaeology,
7 which includes surveys and either salvage or preservation of
8 archaeological resources imperiled by development activities or
9 natural forces;

10 (n) Administer and manage grants, bequests, devises, tax
11 incentives, and easements of property to the state for the purposes
12 of preserving archaeological sites and resources; and

13 (o) Ensure the long-term curation and management of
14 collections and records resulting from undertakings within the
15 state.

16 Sec. 6. (1) Except as provided in subsection (2) of this
17 section, the head of any state agency having direct or indirect
18 jurisdiction over a proposed state or state-funded undertaking,
19 which has potential to affect archaeological resources or sites,
20 shall, prior to the approval of the expenditure of any state funds
21 on the undertaking, notify the State Archaeology Office of the
22 undertaking and cooperate with the office to identify and develop
23 measures to mitigate the effect of the undertaking on any
24 archaeological site or resource that is included in or eligible for
25 inclusion in the National Register of Historic Places.

26 (2) The Department of Roads shall be exempt from the
27 provisions of the Nebraska Archaeological Resources Preservation
28 Act as long as a cooperative agreement exists between the

1 Department of Roads and the Nebraska State Historical Society which
2 ensures that all highway construction projects meet federal
3 historic preservation legislation and regulations, and such federal
4 preservation legislation and regulations fulfill or exceed the
5 objectives and standards of the act.

6 (3) Nothing in this section shall be construed to abridge
7 the rights of private property owners and in no case shall a
8 private property owner be required to pay for activities undertaken
9 by the State Archaeology Office.

10 Sec. 7. The State Archaeology Office, through the
11 Department of Administrative Services, may accept, use, disburse,
12 and administer all funds or other property, services, and money
13 allotted to it for purposes of the Nebraska Archaeological
14 Resources Preservation Act and may prescribe, by rule and
15 regulation, the conditions under which such funds, property,
16 services, or money will be accepted and administered. On behalf of
17 the state, the Nebraska State Historical Society may make such
18 agreements with the approval of the Attorney General, not
19 inconsistent with the laws of this state, as may be required as a
20 condition precedent to receiving such funds or other assistance.
21 No funds, grants, or money received under the Nebraska
22 Archeological Resources Preservation Act shall be used by the State
23 Archeology Office for the purchase of private property.

24 Sec. 8. (1) Any person who knowingly and willfully
25 appropriates, excavates, injures, or destroys any archaeological
26 resource on public land without written permission from the State
27 Archaeology Office is guilty of a Class I misdemeanor. All
28 articles and materials illegally taken and all money and materials

1 derived from the sale or trade of the same shall be forfeited to
2 the state.

3 (2) When the State Archaeology Office has cause to
4 believe that a person has engaged in or is engaging in any unlawful
5 conduct prescribed in this section, it may apply for and obtain, in
6 an action in the appropriate district court of this state, a
7 temporary restraining order or injunction, or both, pursuant to the
8 Nebraska rules of civil procedure prohibiting such person from
9 continuing such practices, or engaging therein, or doing any act in
10 furtherance thereof.

11 Sec. 9. No person, not being the owner thereof or
12 without the consent of the owner, proprietor, lessee, or person in
13 charge thereof, shall enter or attempt to enter upon the lands of
14 another and intentionally injure, disfigure, remove, excavate,
15 damage, take, dig into, or destroy any archaeological resource or
16 any archaeological site located in, on, or under any private lands
17 within the State of Nebraska. Any person committing such act is
18 guilty of a Class I misdemeanor. All articles and material
19 illegally taken and all money and materials derived from the sale
20 or trade of the same shall be forfeited to the private property
21 owner.

22 Sec. 10. The State Archaeology Office may identify
23 properties included in the National Register of Historic Places
24 that are endangered and cannot be protected under the Nebraska
25 Archeological Resources Act and may coordinate and facilitate the
26 purchase and maintenance of endangered properties by other public
27 or private agencies in order to preserve archeological sites or
28 resources located on the properties. The State Archeology Office

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- 1 shall not purchase property with any funds received under the
- 2 Nebraska Archaeological Resources Preservation Act.